

EMPLOYER STATUS DETERMINATION

Lone Star Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Lone Star Railroad, Inc. (Lone Star) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

In Interstate Commerce Commission Finance Docket No. 32500 (service date May 27, 1994), Lone Star and Southern Switching Company (BA No.2868) (Southern)¹ filed a notice of exemption for Lone Star to acquire and Southern to operate 143.3 miles of rail line owned by Burlington Northern Railroad Company (BA No.1621) (BN), between milepost 8.0 near Howard, and milepost 151.3 at Abilene, in Archer, Baylor, Knox, Haskell, Jones and Taylor Counties, Texas. The transaction included 8 miles and 331 feet of incidental trackage rights for Southern over BN between milepost 8.0 in the vicinity of Howard, and milepost 0.0 at Valley Junction, and from Valley Junction east for 331 feet to point of switch in Sunshine Yard in Wichita Falls, Wichita County, Texas.

Ms. Karen Brown, an accountant for Southern Switching, indicated that Lone Star is a holding company for the assets of the railroad, and Southern Switching is the operator. Although Lone Star owns the rail, track, and ties, it owns no rolling stock equipment.

Section 1(a)(1) of the RRA defines the term "employer" to include:

- (i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49 [45 U.S.C. §231(a)(1)(i)].

Section 1 of the RUIA contains the same definition.

The information summarized above indicates that Lone Star does not operate, and never has operated, as a rail common carrier. Rather, as reflected in ICC Finance Docket No. 32500, Lone Star sought and obtained authority only to acquire the rail line in question, while Southern Switching acquired the obligation to operate that line

¹Southern Switching Company is a carrier employer under the RRA and the RUIA, with service creditable from May 16, 1994, the date on which it commenced railroad operations over the line of railroad which is referenced in the text above.

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and, in fact, does operate the line. Since Lone Star does not perform service as a rail common carrier, a majority of the Board finds that it is not an employer under the RRA and the RUIA.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting)

Jerome F. Kever

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TO: The Board

FROM: Catherine C. Cook
General Counsel

SUBJECT: Revised Employer Status Determination
Lone Star Railroad, Inc.

Attached is a revised recommended coverage determination which I believe addresses the concerns raised by Mr. Kever in his memorandum of March 3, 1995.

Attachment